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12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 * * *

15 ELIZABETH ANN DOUGHERTY as co-
special administratrix of the Estate of
PATRICK JAMES CAVANAUGH SR.;
16 PATRICK JAMES CAVANAUGH, JR., as
special administrator of the estate of
17 PATRICK JAMES CAVANAUGH, SR.,
and PATRICK JAMES CAVANAUGH,
18 JR., AIKI CAVANAUGH and PATRICK
JAMES "PJ" CAVANAUGH,

Case No.

19 Plaintiffs,

COMPLAINT AND JURY DEMAND

20 vs.

21 E.K. MCDANIEL in his official capacity as
22 WARDEN at ELY STATE PRISON (ESP);
DEBRA BROOKS in her official capacity
23 as ASSOCIATE WARDEN FOR
OPERATIONS at ESP; ADAM ENDEL in
24 his official capacity as ASSOCIATE
WARDEN FOR PROGRAMS at ESP;
25 THEODORE D'AMICO, M.D, MEDICAL
DIRECTOR for Nevada Department of
26 Corrections; ROBERT BANNISTER,
M.D., MEDICAL DIRECTOR for the
27 Nevada Department of Corrections;
STEVEN MacARTHUR, M.D.; MAX
28 CARTER; STATE OF NEVADA
DEPARTMENT OF CORRECTIONS as
nominal Defendants; JOHN DOES 1

1 through 15, inclusive; BLACK & WHITE
 CORPORATIONS 1 through 15, inclusive;
 RED AND WHITE MUNICIPAL ENTITIES
 1 through 15, inclusive,

Defendants.

Plaintiffs PATRICK JAMES CAVANAUGH, JR., special administrator of the estate of PATRICK JAMES CAVANAUGH, SR.; ELIZABETH ANN DOUGHERTY, co-special administratrix of the Estate of PATRICK JAMES CAVANAUGH SR., and PATRICK JAMES CAVANAUGH, JR., AIKI CAVANAUGH and PATRICK JAMES "PJ" CAVANAUGH, by and through their counsel, Marc Picker, Esq., of Marc Picker, Esq., Ltd., Donald York Evans, Esq., and Cal J. Potter, III, Esq. and Lawrence W. Freiman, Esq. of Potter Law Offices, hereby allege, complain and aver against Defendants, and each of them, as follows:

JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1343 in that claims herein arise under the federal civil rights statutes, and pursuant to 28 U.S.C. § 1331, in that federal questions exist. Supplemental jurisdiction exists over state law claims pursuant to 28 U.S.C. § 1331. Venue is proper in this district and in this, the unofficial northern division of this district, because the Defendants are subject to personal jurisdiction here, and the claims arose here.

NATURE OF CASE

2. This is an action for damages and for attorney's fees and costs brought by PATRICK JAMES CAVANAUGH, JR., who is in the process of applying to be the personal representative of the estate of PATRICK JAMES CAVANAUGH, SR., (hereinafter referred to as "Mr. CAVANAUGH") and ELIZABETH ANN DOUGHERTY as co-special administratrix of the Estate of PATRICK JAMES CAVANAUGH SR. Mr. CAVANAUGH alleges that the defendants, and each of them, being in violation of the Fourth and Fourteenth Amendments to the Constitution and laws of the United States of America, unlawfully and under color of authority, violated the plaintiff's rights by failure to provide adequate medical treatment to Mr. CAVANAUGH to the point of his

1 death.

2 The acts committed against Mr. CAVANAUGH:

3 a. Violated the Fourth, Eighth and Fourteenth Amendments to the
4 Constitution and laws of the United States of America;

5 b. Were tortious under the laws of the State of Nevada and the common law.

6 Claims are stated for violation of the civil rights of the Plaintiff, for failure to
7 provide necessary medical treatment to Mr. CAVANAUGH, for inflicting cruel and
8 unusual punishment upon Plaintiff, for the infliction of intentional emotional distress on
9 the Plaintiff, and for failure to attend to Plaintiff's medical needs in a timely manner.

10 **PARTIES**

11 3. Plaintiff PATRICK JAMES CAVANAUGH, JR., is the son and duly
12 appointed special administrator and ELIZABETH ANN DOUGHERTY is the co-special
13 administratrix of the estate of PATRICK JAMES CAVANAUGH, SR., who at all times
14 relevant hereto was an inmate of Ely State Prison (hereinafter "ESP"), County of White
15 Pine, State of Nevada, having been convicted of first degree murder.

16 4. Plaintiffs PATRICK JAMES CAVANAUGH, JR., AIKI CAVANAUGH and
17 PATRICK JAMES "PJ" CAVANAUGH are the heirs to the estate of PATRICK JAMES
18 CAVANAUGH, SR.

19 5. Defendant E.K. McDANIEL, (hereinafter "McDANIEL") is sued herein as
20 an individual and in his official capacity as WARDEN at ESP at the time, and he is and
21 at all times relevant and to our knowledge a resident of the County of White Pine, State
22 of Nevada. In doing the acts alleged herein, he acted individually and as Warden at Ely
23 State Prison, located in the County of White Pine, State of Nevada, under color of state
24 law.

25 6. Defendant DEBRA BROOKS in her official capacity as ASSOCIATE
26 WARDEN OF OPERATIONS (hereinafter "BROOKS") is sued herein as an individual
27 and in her official capacity as ASSOCIATE WARDEN OF OPERATIONS at ESP at the
28 time, and she is and at all times relevant and to our knowledge a resident of the County
of White Pine, State of Nevada. In doing the acts alleged herein, she acted individually

1 and as Associate Warden - Operations at Ely State Prison, located in the County of
2 White Pine, State of Nevada, under color of state law.

3 7. Defendant ADAM ENDEL (hereinafter "ENDEL") is sued herein as an
4 individual and in her official capacity as ASSOCIATE WARDEN OF PROGRAMS at
5 ESP at the time, and he is and at all times relevant and to our knowledge a resident of
6 the County of White Pine, State of Nevada. In doing the acts alleged herein, he acted
7 individually and as Associate Warden - Programs at Ely State Prison, located in the
8 County of White Pine, State of Nevada, under color of state law.

9 8. Defendant THEODORE D'AMICO, M.D., is and/or was the MEDICAL
10 DIRECTOR of Nevada Department of Corrections, who supervises the clinical staff and
11 operations of medical, mental health and dental services. In doing the acts alleged
12 herein, he/she acted under color of state law as an employee of Nevada Department of
13 Corrections. Further, Defendant D'AMICO's acts, including the training, supervision and
14 retaining of Nevada Department of Corrections medical staff, were all done pursuant to
15 custom and policy of Nevada Department of Corrections.

16 9. Defendant ROBERT BANNISTER, M.D., is and/or was the MEDICAL
17 DIRECTOR of Nevada Department of Corrections, who supervises the clinical staff and
18 operations of medical, mental health and dental services. In doing the acts alleged
19 herein, he/she acted under color of state law as an employee of Nevada Department of
20 Corrections. Further, Defendant BANNISTER's acts, including the training, supervision
21 and retaining of Nevada Department of Corrections medical staff, were all done
22 pursuant to custom and policy of Nevada Department of Corrections.

23 10. Defendant STEVEN MacARTHUR, M.D., is and/or was the staff physician
24 at ESP during the incidents complained of herein and was personally responsible for
25 providing and directing medical treatment for Mr. CAVANAUGH and other inmates at
26 ESP.

27 11. Defendant MAX CARTER, is and/or was a physician's assistant employed
28 by the Nevada Department of Corrections to provide medical services and treatment to
inmates at ESP and more specifically he provided medical services and treatment to

1 Mr. CAVANAUGH.

2 12. Defendant NEVADA DEPARTMENT OF CORRECTIONS (hereinafter
3 "NDOC"), is a duly constituted political subdivision of the State of Nevada and the
4 employer of ESP, whose acts were all done pursuant to custom and policy of
5 Defendant NDOC.

6 13. Plaintiffs do not know the true names and capacities or involvement,
7 whether individual, corporate, associate, partnership or otherwise of the Defendants
8 named herein as JOHN DOES 1 through 15, inclusive; BLACK & WHITE
9 CORPORATIONS 1 through 15, inclusive; or RED AND WHITE MUNICIPAL ENTITIES
10 1 through 15, inclusive. Plaintiffs are informed and believe, and upon such information
11 and belief allege, that each of the Defendants designated herein as DOE, BLACK &
12 WHITE CORPORATION or RED AND WHITE MUNICIPAL ENTITIES is negligently or
13 otherwise legally responsible in some manner for the events and happenings referred to
14 herein, and that each negligently or otherwise caused injury or damages proximately
15 suffered by the Plaintiffs, as more particularly alleged herein. Plaintiffs pray leave to
16 amend this Complaint to show their true names and capacities when the same have
17 been finally determined.

18 14. At all times pertinent hereto, the named Defendants herein were acting by
19 and through its authorized employees, agents or other representatives, who were
20 operating within the course and scope of their representative capacity, and whose
21 conduct has been ratified by each said Defendant.

22 15. At all times pertinent hereto, the named Defendants were operating by,
23 through and in consort with other individuals, partnerships and/or corporations yet to be
24 named in this action, and was acting in furtherance of a civil conspiracy with said
25 unnamed individuals, partnerships and/or corporations.

26 **FACTS OF THE CASE**

27 16. On or about January 1985, Mr. CAVANAUGH was incarcerated within the
28 Nevada Department of Corrections, and at the time of the incidents alleged herein at
the Ely State Prison.

1 17. Mr. CAVANAUGH, was an insulin dependent diabetic, who lived in the Ely
2 State Prison infirmary for at least two years before his agonizing death on April 10,
3 2006.

4 18. Immediately after his death he was transported to a funeral home. There
5 is no record of an autopsy or a mortality review in his file.

6 19. Plaintiffs are informed and do believe that the listed cause of death was
7 complications of Diabetes Mellitus, peripheral gangrene of both lower extremities,
8 hypertension, and congestive heart failure - all untreated.

9 20. Plaintiffs are informed and do believe that in the best of circumstances
10 (hospitalization, quick antibiotics, and early detection) gangrene has a thirty percent
11 (30%) mortality rate, but untreated, it is essentially one hundred percent (100%) fatal.

12 21. Plaintiffs are informed and believe that Mr. CAVANAUGH received almost
13 no treatment for his illnesses, so his slow, painful death in the Ely State Prison infirmary
14 was virtually assured.

15 22. Plaintiffs are informed and do believe that given the profound and
16 unmistakable smell of putrefying flesh, there can be no question that every medical
17 provider and correctional officer in that infirmary was acutely aware of Mr.
18 CAVANAUGH's condition.

19 23. Although Mr. CAVANAUGH was an insulin-dependent diabetic, Plaintiff is
20 informed and does believe there was an unsigned order in his chart stopping all his
21 medications, including his insulin on August 28, 2003, without indication as to why this
22 was done.

23 24. Plaintiffs are informed and do believe that subsequently, Insulin was
24 ordered sporadically thereafter but was never given for a period of three (3) years.

25 25. Plaintiffs are informed and do believe that during this entire period Mr.
26 CAVANAUGH's blood sugars were dangerously high, running from 300 to 400, and that
27 he developed leg ulcers due to diabetes as early as 2001, indicating that his disease
28 was quite severe and negligently managed for years.

 26. Plaintiffs are informed and do believe that no medical consideration was

1 ever given to surgically removing the gangrenous limbs even though this procedure
2 could have saved Mr. CAVANAUGH's life.

3 27. As a result, Ely State Prison medical staff literally left Mr. CAVANAUGH to
4 rot to death.

5 28. Plaintiffs are informed and do believe that prison medical records suggest
6 that Mr. CAVANAUGH "would not let" people come into his cell and that he started
7 refusing all medications except for aspirin. Progress notes in his chart detail increasing
8 paranoia and probable dementia. Moreover, gangrene is known to derange the mind.

9 29. Given Mr. CAVANAUGH's demented state, an order was obtained to use
10 force if necessary to move him from cell to cell once a week so that excrement, trash,
11 food and other filth could be cleaned up. In contrast, there is no order to force life-
12 sustaining medications or psychiatric medications.

13 30. Plaintiffs are informed and do believe that a typed "chronological for
14 forced med panel" is present in Mr. CAVANAUGH's medical chart, but there is no
15 response from the panel and no evidence that such an order was ever sought.

16 31. Plaintiffs are informed and do believe that on April 19, 2002, Mr.
17 CAVANAUGH's medications were being crushed and put in his food for a brief period of
18 time. This practice was discontinued without explanation.

19 32. Plaintiffs are informed and do believe that although a signed and
20 notarized full, non-limited Power of Attorney Authorization giving power to Elizabeth Ann
21 Dougherty is present in his chart, there is no indication that his guardian was ever
22 contacted regarding his medical care and the need to treat his various grave medical
23 conditions, despite his dementia.

24 33. Apparently prison officials decided not to force life-sustaining medications
25 on Mr. CAVANAUGH, even though he clearly was not able to make medical decisions
26 himself, and they did so without consulting his legal guardian.

27 34. It is the opinion of at least one medical professional familiar with Mr.
28 CAVANAUGH's medical record that this decision for Mr. CAVANAUGH was one of
prolonged agony, unnecessary suffering and death.

1 35. Plaintiffs are informed and do believe that even during his last days before
2 death, where an order is given for five milligrams of morphine sulfate every four (4) to
3 five (5) hours to alleviate his terrible pain and suffering, there is no evidence that this
4 palliative order was ever carried out. Instead, it appears the order was ignored and Mr.
5 CAVANAUGH was left to suffer.

6 36. Plaintiffs are informed and do believe that much of Mr. CAVANAUGH's
7 prison medical record is missing, including little to no record of the 1980's or 1990's. In
8 addition, the nurse's notes have large temporal gaps that are impossible to explain in
9 the normal course of nurse note taking.

10 37. Plaintiffs are further informed and do believe that the Physician Progress
11 Notes in Mr. CAVANAUGH's prison medical record are also very sparse, starting on
12 March 2, 2002, and ending on the date of death, as well the medication sheets only
13 start at February 24, 2002 and end at date of death.

14 38. Plaintiffs are informed and do believe that there are also no laboratory
15 reports in Mr. CAVANAUGH's entire prison medical chart, which is very difficult to
16 explain for a man with his dangerous health problems.

17 39. Plaintiffs are further informed and do believe that the health provider
18 progress notes prefer to label the nature of Mr. CAVANAUGH's illness as "cellulitis" but
19 it is clear that he suffered from severe, untreated gangrene.

20 40. Plaintiffs are informed and do believe that by stopping Mr. CAVANAUGH's
21 medications, it was perfectly clear to any trained medical personnel that Mr.
22 CAVANAUGH would die, and die a most miserable death.

23 41. On April 10, 2006, Mr. CAVANAUGH died in the infirmary at Ely State
24 Prison.

25 42. Plaintiffs are informed that Mr. CAVANAUGH filed grievances and raised
26 complaints regarding the inappropriate medical treatment or complete lack of any
27 treatment he has received.

28 43. Defendant McDANIEL is personally aware of such grievances and has
denied each, despite Mr. CAVANAUGH's deteriorating medical condition and his being

1 in constant pain. Each grievance was specifically reviewed by Defendants ENDEL and
2 BROOKS prior to such being forwarded to Defendant McDANIEL.

3 44. Each of the named health provider Defendants were personally aware of
4 Mr. CAVANAUGH's medical condition and were deliberately indifferent to his need for
5 serious medical treatment.

6 45. Plaintiffs have been required to retain the services of Marc Picker, Esq.,
7 Ltd., Donald York Evans, Esq., and Cal J. Potter, III, Esq. to prosecute this action and
8 are entitled to a reasonable attorney's fees and costs therefor under 42 U.S.C. §1988.

9 WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

10 **FIRST CLAIM FOR RELIEF**

11 (Violation of 42 U.S.C.A. § 1983)

12 (Custom and Policy)

13 46. Mr. CAVANAUGH refers to paragraphs 2 through 45 herein and by this
14 reference incorporates them herein as though they set forth fully here.

15 47. Defendants knowingly made, modified and carried out policies of the
16 State of Nevada and its correctional department regarding the inappropriate or
17 complete lack of medical treatment and care for Mr. CAVANAUGH.

18 48. At all times material hereto, Defendants were deliberately indifferent to Mr.
19 CAVANAUGH's medical condition and refused and failed to provide proper medical
20 treatment.

21 49. Mr. CAVANAUGH followed all administrative procedures to obtain remedy
22 for his deteriorating medical condition but all such efforts have been denied.

23 50. Mr. CAVANAUGH followed all medical orders and directions while in
24 custody but his physical condition continued to deteriorate until death.

25 51. Having ignored Mr. CAVANAUGH's medical needs and having blatantly
26 disregarded Mr. CAVANAUGH's deteriorating medical condition, all Defendants
27 subjected themselves to liability under the provisions of 42 U.S.C. § 1983 to Mr.
28 CAVANAUGH for subjecting him to the risk of, and -- as it turned out -- the actual
occurrence of, his painful and agonizing death.

1 As a direct and proximate result of Defendant's actions and inactions toward Mr.
2 CAVANAUGH, Defendants are liable in an amount to be more fully determined at trial.

3 WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

4 **SECOND CLAIM FOR RELIEF**

5 (Violation of 42 U.S.C.A. §1983)

6 (Deliberate Indifference to Serious Medical Need)

7 52. Mr. CAVANAUGH refers to paragraphs 2 through 51 herein, and by this
8 reference, incorporates them herein as set forth fully here.

9 53. Defendants, and each of them, were deliberately indifferent to Mr.
10 CAVANAUGH's constitutional rights by failing to provide proper care by staff members
11 for necessary medical needs for Mr. CAVANAUGH.

12 54. Defendants, and each of them, deliberately ignored Mr. CAVANAUGH's
13 serious and life-threatening medical needs.

14 55. The Eighth Amendment guarantees adequate medical care for inmates.

15 56. Defendants, and each of them, through their deliberate indifference and
16 failure to provide adequate medical care, denied Mr. CAVANAUGH the minimal civilized
17 measure of life's necessities resulting in his death.

18 57. Said deliberate indifference and failure to provide adequate medical care
19 subjected Mr. CAVANAUGH to cruel and unusual punishment in violation of the Eighth
20 Amendment.

21 58. As a direct and proximate result of the Defendants' deliberate
22 indifference, Mr. CAVANAUGH suffered serious pain and death and is entitled to
23 compensation for the aforementioned damages, and the Defendants, and each of
24 them, have subjected themselves to liability for those damages pursuant to the
25 common law and the statutory law of the State of Nevada.

26 As a direct and proximate result of Defendant's actions and inactions toward Mr.
27 CAVANAUGH, Defendants are liable in an amount to be more fully determined at trial.

28 WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

THIRD CLAIM FOR RELIEF

(Violation of 42 U.S.C.A. 1983)

(Custom and Policy)

59. Mr. CAVANAUGH refers to paragraphs 2 through 58 herein and by this reference incorporates them herein as though set forth fully here.

60. As a custom and policy, Defendants, and each of them, typically refuse to provide medical care to inmates and, in the instant matter, failed and refused to provide necessary medical care to Mr. CAVANAUGH. This failure constituted deliberate indifference to Mr. CAVANAUGH's right to due process.

61. As a direct and proximate result of the Defendants' deliberate indifference in failing to provide medical care for Mr. CAVANAUGH's medical needs and in previous acts of deliberate indifference, Defendants, and each of them, have established custom and policy for Defendants' employees.

62. In doing the acts mentioned in this Third Claim for Relief, Mr. CAVANAUGH has suffered and is entitled compensation for the aforementioned damages.

As a direct and proximate result of Defendant's actions and inactions toward Mr. CAVANAUGH, Defendants are liable in an amount to be more fully determined at trial.

WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

FOURTH CLAIM FOR RELIEF

(Negligent Training, Supervising and Retention)

63. Mr. CAVANAUGH refers to paragraphs 2 through 62 herein and by this reference incorporates them herein as though set forth fully here.

64. In their respective roles as employers and supervisors of personnel, Defendants, and each of them, had a duty to insure that their employees would conduct themselves on the job in a manner that was not adverse, inimical, or damaging to the safety and welfare of the inmates with whom they came in contact.

65. By refusing Mr. CAVANAUGH necessary medical treatment and blatantly disregarding Mr. CAVANAUGH's life-threatening medical condition, Defendants, and each of them, breached that duty to Mr. CAVANAUGH thereby proximately and actually

1 causing the damages that are described herein.

2 66. Defendants, and each of them, acting with deliberate indifference to the
3 health and rights of Mr. CAVANAUGH aforementioned, failed to adequately train and
4 supervise its employees, so as to avoid constitutional violations such as those suffered by
5 Mr. CAVANAUGH as alleged herein, subjecting said Defendants to liability under 42 U.S.C.
6 §1983.

7 67. As a direct and proximate result of Defendant's actions and inactions toward
8 Mr. CAVANAUGH, Defendants are liable in an amount to be more fully determined at trial.

9 As a direct and proximate result of Defendant's actions and inactions toward Mr.
10 CAVANAUGH, Defendants are liable in an amount to be more fully determined at trial.

11 WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

12 **FIFTH CLAIM FOR RELIEF**

13 (Breach of Duty of Due Care)

14 68. Mr. CAVANAUGH refers to paragraphs 2 through 67 herein and by this
15 reference incorporates them herein as though set forth fully here.

16 69. Defendants, and each of them, had a duty to exercise reasonable care so
17 as to provide adequate medical care and treatment for Mr. CAVANAUGH and, in doing
18 the acts mentioned hereinabove, breached that duty.

19 70. As a direct and proximate cause of these Defendants' deliberate
20 indifference, Mr. CAVANAUGH suffered agonizing pain and death, and is entitled to
21 compensation for the aforementioned damages, and Defendants have subjected
22 themselves to liability for those damages pursuant to the common law and the statutory
23 law of the State of Nevada.

24 As a direct and proximate result of Defendant's actions and inactions toward Mr.
25 CAVANAUGH, Defendants are liable in an amount to be more fully determined at trial.

26 WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

27 **SIXTH CLAIM FOR RELIEF**

28 (Punitive Damage Claim)

71. Mr. CAVANAUGH refers to paragraphs 2 through 70 herein and by this

1 reference incorporates them herein as though they were set forth in full in this place.

2 72. The egregious and outrageous conduct of Defendants, and each of them,
3 was done with deliberate indifference to and callous disregard for the constitutional
4 rights of Mr. CAVANAUGH, with malice and evil motive, entitling him to an award of
5 punitive and exemplary damages.

6 As a direct and proximate result of Defendant's actions and inactions toward Mr.
7 CAVANAUGH, Defendants are liable in an amount to be more fully determined at trial.

8 WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

9 **SEVENTH CLAIM FOR RELIEF**

10 **(Conspiracy)**

11 73. Mr. CAVANAUGH refers to paragraphs 2 through 72 herein and by this
12 reference incorporates them herein as though they were set forth in full in this place.

13 74 At all times during the events described above, the prison officials were
14 engaged in a joint venture. The individual officials assisted each other in performing
15 the various actions described and lent their physical presence and support and the
16 authority of their office to each other during the said events.

17 75. The Defendants and each of them conspired for the purpose of depriving
18 Mr. CAVANAUGH of his Constitutional rights.

19 76. That during the period of time of the said incident all of the Defendants
20 and each of them and others unnamed, combined, confederated and agreed together
21 and with each other knowingly and willfully engage in the following acts, among others,
22 to cause harm to Mr. CAVANAUGH as follows:

23 (a) To violate Mr. CAVANAUGH'S civil rights pursuant to 42 U.S.C. § 1983 by
24 acting in a deliberate indifferent manner towards Mr. CAVANAUGH by failing to provide
25 proper care for necessary and life threatening medical needs;

26 (b) To violate Mr. CAVANAUGH'S civil rights pursuant to 42 U.S.C. § 1983 by
27 acting in a deliberately indifferent manner, ultimately leading to his death.

28 77. As a direct and proximate cause of the defendants and each of their
actions Mr. CAVANAUGH suffered damages, including serious physical and mental

1 pain and suffering, emotional distress and death depriving him of his constitutional
2 rights as set forth herein.

3 As a direct and proximate result of Defendants' actions and inactions toward Mr.
4 CAVANAUGH, the Defendants are liable in an amount to be more fully determined at
5 trial.

6 WHEREFORE, Plaintiffs pray for relief as more fully enumerated below.

7 **EIGHTH CLAIM FOR RELIEF**

8 **(Medical Malpractice/Negligence)**

9 78. Mr. CAVANAUGH refers to paragraphs 2 through 77 herein and by this
10 reference incorporates them herein as though they were set forth in full in this place.

11 79. This action is also brought to seek redress for the torts of wrongful death,
12 medical negligence and medical malpractice against Defendant Dr. Steven MacArthur.
13 Said cause of action is supported by the sworn report of Dr. Simone Russo attached
14 hereto and incorporated herein as Exhibit 1.

15 80. Defendants, and each of them, owed a statutory duty to Mr.
16 CAVANAUGH pursuant to NRS § 208.131(4) for supervision, custody, treatment, care,
17 security and discipline of all offenders in their care and custody and NRS § 209.131(6)
18 to take proper measures to protect the health and safety of the staff and offenders in
19 the institutions and facilities of the department and breached that statutory duty by
20 failing in the care of Mr. CAVANAUGH, directly causing the death of Mr. CAVANAUGH
21 while he was under the jurisdiction of the Defendants.

22 81. Defendants, and each of them, acted wantonly, willfully, oppressively and
23 maliciously toward Mr. CAVANAUGH under the terms of the Department of Prisons,
24 Chapter 209, in failing to properly care for Mr. CAVANAUGH pursuant to NRS §
25 209.331, "An offender may be taken outside an institution...for medical evaluation or
26 treatment," all to Plaintiff's damages in an amount to be determined at trial.

27 82. As a proximate result of the conduct of Defendants, and each of them, Mr.
28 CAVANAUGH suffered and Plaintiffs continue to suffer through their loss, humiliation
and mental anguish, all to Plaintiff's damages in an amount to be determined at trial.

PRAYER

1. For an award of nominal damages;
2. For an award of general damages in a sum to be determined at trial;
3. For an award of special damages in a sum to be determined at trial;
4. For an award of punitive damages in a sum to be determined at trial;
5. For declaratory and injunctive relief as prayed for hereinabove;
6. For an award of reasonable attorney's fees and costs of suit; and
7. For such other and further relief as the Court deems just and proper.

[illegible]

DEMAND FOR JURY TRIAL

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Plaintiffs hereby
demands a trial by jury of all the issues in the above-entitled matter.

DATED this 9th day of April, 2008.

MARC PICKER, ESQ., LTD.

DONALD YORK EVANS, LTD.

/s/ Marc Picker

MARC PICKER, ESQ.

/s/ Donald Evans

DONALD YORK EVANS, ESQ

POTTER LAW OFFICES

/s/ Cal J. Potter, III

CAL J. POTTER, III, ESQ.